

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BRUCE MUNRO AND BRUCE MUNRO)	
STUDIO,)	CIVIL ACTION NO. 1:15-cv-771
)	
Plaintiffs,)	
)	
vs.)	NOTICE OF REMOVAL
)	
LUCY ACTIVEWEAR, INC., LUCY)	
APPAREL, LLC, VF OUTDOOR, INC.,)	
AND VF CORPORATION,)	
)	
Defendants.)	

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

Defendants Lucy Activewear, Inc., Lucy Apparel, LLC, VF Outdoor, Inc., and VF Corporation, by and through their undersigned counsel, hereby file this Notice of Removal, removing this action from the Travis County District Court, 345th Judicial District, State of Texas, to the United States District Court for the Western District of Texas, Austin Division. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 1367, 1441, 1446, *et. seq.* As grounds for removal, Defendants respectfully state as follows:

INTRODUCTION

1. On or about August 10, 2015, a civil action was filed in the 345th Judicial District Court of Travis County, Texas entitled *Bruce Munro, et al. v. Lucy Activewear, Inc., et al.*, Case No. D-1-GN-15-003245. Plaintiffs in the action are Bruce Munro and Bruce Munro Studios. Defendants in the action are Lucy Activewear, Inc., Lucy Apparel, LLC, VF Outdoor, Inc., and VF Corporation.

2. On or about August 28, 2015, Plaintiffs filed their Amended Petition in the 345th Judicial District Court of Travis County, naming the same Defendants.

3. Plaintiffs assert sixteen causes of action in the lawsuit: fraud (Count I), tortious interference with prospective business opportunities (Count II), misappropriation of trade secrets (Count III), common law trademark and trade dress infringement (Counts IV and V), false designation of origin and unfair competition (Counts VI and VII), trademark and trade dress dilution (Counts VIII and IX), injury to business reputation and dilution under Tex. Bus. & Com. Code § 16.103 (Counts X and XI), common law unfair competition (Count XII), conspiracy (Count XIII), unjust enrichment (Count XIV), constructive trust (Count XV), and an accounting (Count XVI). (*See* Amended Petition, pages 26-41, ¶¶ 102-201.) Plaintiffs seek damages, an accounting and recovery of Defendants' gross profits, specific performance, declaratory relief, injunctive relief, seizure and destruction of articles/advertising, imposition of a constructive trust, pre- and post-judgment interest, costs and attorneys' fees.

4. To date, Defendants have not yet answered the Petition.

5. A copy of the entire docket for the State Court Action is attached hereto and made a part hereof as Exhibits A - D.

6. A copy of the Defendants' Notice of Removal that Defendants are contemporaneously filing in the State Court Action is attached hereto as Exhibit E.

FEDERAL QUESTION JURISDICTION EXISTS

7. The District Courts of the United States have original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338. Counts VI and VII of the lawsuit assert claims for false designation of origin and unfair competition under the Lanham Act, 15 U.S.C. § 1125(a) (Amended Petition, ¶ 149-158), and Counts VIII and IX assert claims for trademark and trade

dress dilution under the Lanham Act, 15 U.S.C. § 1125(c) (Amended Petition, ¶¶ 159-169). Because Plaintiffs assert federal claims, the lawsuit may be removed under 28 U.S.C. § 1441(a). This Court also has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. 1367.

DIVERSITY JURISDICTION EXISTS

8. This Court also has original jurisdiction under 28 U.S.C. § 1332 based upon diversity of citizenship among the parties, and because the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of Citizenship Requirement is Satisfied

9. Plaintiffs are residents of England. (Amended Petition, ¶ 13.)

10. In the Amended Petition, Plaintiffs allege that Defendant Lucy Activewear, Inc. is a Delaware corporation with its principal place of business in Alameda, California. (Amended Petition, ¶ 14.) Lucy Activewear, Inc. no longer exists as a corporate entity.

11. Defendant Lucy Apparel, LLC is a Delaware limited liability company with its principal place of business in Wilmington, Delaware. (*Id.*, ¶ 15.)

12. Defendant VF Outdoor, Inc. is a Delaware corporation with its principal place of business in Alameda, California. (*Id.*, ¶ 16.)

13. Defendant VF Corporation is a Pennsylvania corporation with its principal place of business in Greensboro, North Carolina. (*Id.*, ¶ 17.)

14. Because Plaintiffs reside in England, and Defendants are residents of Delaware, California, Pennsylvania and North Carolina, the diversity of citizenship requirement of 28 U.S.C. §1332 (incorporated into 28 U.S.C. § 1441) is satisfied.

B. The Amount in Controversy Requirement is Satisfied

15. In their Amended Petition, Plaintiffs allege damages that exceed the jurisdictional amount in controversy. Plaintiffs plead that they are entitled to “monetary relief of over \$1,000,000.” (Amended Petition, ¶ 11.) Accordingly, the \$75,000 amount in controversy requirement of 28 U.S.C. § 1332 (incorporated into 28 U.S.C. § 1441) is satisfied.

REMOVAL TO THE WESTERN DISTRICT OF TEXAS
IS TIMELY AND PROPER

16. This Notice of Removal is timely under 28 U.S.C. §§ 1441 and 1446(b) because it is filed within thirty (30) days of the first receipt of the Original Petition initiating the lawsuit.

17. The Original Petition was filed on August 10, 2015. Defendants received a copy of the lawsuit on August 12, 2015. Defendants agreed to waive service and the parties agreed to a response date of September 11, 2015. Defendants have filed this Notice of Removal within thirty (30) days after receiving the Original Petition and prior to the agreed September 11, 2015 deadline.

18. All Defendants are represented by Dane McKaughan of Greenberg Traurig, LLP, and all Defendants have joined in this Notice of Removal.

19. As required under 28 U.S.C. § 1446(a), Defendants have attached certified copies of all process, pleadings and orders served in the underlying action, which consists of the Original Petition, the Stipulated Waiver of Service and Agreed Response Extension, and the Amended Petition, attached hereto as Exhibits B – D and incorporated by reference. A certified copy of the Docket Sheet from the State Court Action is attached as Exhibit A.

20. Defendants are providing Plaintiffs, by and through their counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d). Further, Defendants are filing a copy of this Notice of Removal with the Clerk of the Travis County Texas District

Court, where the case is currently pending. A copy of the Notice of Removal filed in the State Court Action is attached hereto as Exhibit E.

21. Defendants dispute Plaintiffs' claims and contend only that the nature of Plaintiffs' claims as pled demonstrate that this Court has jurisdiction and that removal is proper. Defendants reserve all defenses, including, without limitation, lack of personal jurisdiction, improper venue and inconvenient venue.

22. The undersigned counsel has read the foregoing and signs the Notice of Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

DEMAND FOR JURY TRIAL

23. Defendants request trial by jury of all issues.

PRAYER

WHEREFORE, Defendants Lucy Activewear, Inc., Lucy Apparel, LLC, VF Outdoor, Inc., and VF Corporation hereby request that the above-titled action now pending against them in the 345th Judicial District Court of Travis County, Texas, be removed therefrom to this Court under 28 U.S.C. §§ 1331, 1332, 1338, 1367, 1441, 1446 *et. seq.*, and requests that further proceedings be conducted in the U.S. District Court of the Western District of Texas as provided by law.

If any questions arise as to the propriety of the removal of this action or the Court's exercise of federal jurisdiction, Defendants request the opportunity to present a brief and oral argument.

Respectfully submitted,

GREENBERG TRAURIG LLP

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**ATTORNEYS FOR DEFENDANTS LUCY
ACTIVEWEAR, INC., LUCY APPAREL,
LLC, VF OUTDOOR, INC., AND VF
CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2015, a true and correct copy of the above and foregoing was electronically filed with the Clerk of the United States District Court for the Western District of Texas, Austin Division, using the CM/ECF system, which shall send electronic notification of such filing to all counsel of record in this case, and served any non-ECF participants by U.S. Registered E-mail.

/s/ Dane McKaughan
Dane McKaughan